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SEATTLE

ATTORNEYS AT LAW

2000 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20006-1812  
TELEPHONE (202) 887-1500  
TELEFACSIMILE (202) 887-0763

NEW YORK  
DENVER  
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BRUSSELS  
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TOKYO

December 19, 1996

Writer's Direct Dial Number  
(202) 887-1510

EX PARTE OR LATE FILED

William F. Caton  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W. - Room 222  
Washington, D.C. 20554

Re: **EX PARTE PRESENTATION**  
IB Docket No. 95-91/  
GEN Docket No. 90-357

RECEIVED  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, I hereby notify you that Toni Cook Bush and I, with William Caldwell and Doug Minster of Digital Satellite Broadcasting Corporation ("DSBC"), met yesterday with members of the International Bureau including Donald Gips, Rosalee Chiara, and John Stern. We discussed the auction rules and procedures to be applied to satellite DARS at 2320-2345 MHz. By the attached letter, we are also providing a more detailed written presentation concerning these issues.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, an original and two copies of this letter and the attached written presentation are being submitted to the Office of the Secretary for inclusion in the public record. Please direct any questions or concerns to the undersigned.

Sincerely,

*Cheryl A. Tritt* /s/

Cheryl A. Tritt

Counsel for Digital Satellite  
Broadcasting Corporation

cc: Donald Gips  
Rosalee Chiara  
John Stern

dc-58165

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December 20, 1996

By Messenger

William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: **EX PARTE PRESENTATION**  
IB Docket No. 95-91  
GEN Docket No. 90-357

Dear Mr. Caton:

Digital Satellite Broadcasting Corporation ("DSBC") files this written ex parte presentation to urge the Federal Communications Commission ("FCC" or "Commission"), that if the Commission decides to conduct an auction, to auction the licenses in the above-captioned proceeding in a manner that will foster the development of competitive and economically robust satellite DARS.

Specifically, if the Commission proceeds by competitive auction, it should hold an auction for two nationwide 12.5 MHz satellite DARS licenses open only to the four pending applicants in this proceeding. The conditions for this auction should include both an upfront payment based on the expected value of the licenses to be auctioned and compliance with the Commission's rules. The two auction winners should receive associated feeder link spectrum licenses without auction. Adoption of these measures will help ensure that the satellite DARS market at 2320-2345 MHz develops to bring new diversity to the audio broadcasting marketplace in the public interest.

**I. The Commission should auction two 12.5 MHz nationwide licenses for satellite DARS.**

*Two 12.5 MHz nationwide licenses.* It is vital to the development of a competitive satellite DARS market that the Commission award licenses for satellite DARS in two nationwide 12.5 MHz blocks. Because it would be difficult, if not

impossible, to provide economically viable satellite DARS with less than 12.5 MHz per licensee, the Commission cannot afford to reduce the amount of allocated spectrum without sacrificing the introduction of competition in this new market. The amount of dedicated satellite DARS spectrum has already been halved from 50 to 25 MHz. Given that economically viable satellite DARS cannot be provided with less than 12.5 MHz, any further reduction in the amount of spectrum allocated to satellite DARS would result in a monopoly provider of satellite DARS. To enable the development of a competitive and robust satellite DARS market, consistent with the Commission's goal of fostering competition in new wireless services, the Commission should auction licenses for two 12.5 MHz licenses for nationwide service areas.<sup>1</sup>

**II. The satellite DARS auction should be limited to pending applicants that make upfront payments and comply with the Commission's rules.**

*Auction participants.* The satellite DARS auction should be open only to the pending applicants in this proceeding. Opening the auction to additional parties at this late stage would unnecessarily delay the provision of DARS and would be grossly unfair to the entities whose applications to provide service have been pending since 1992. During the four years in which these applications have been pending, the applicants have invested substantial resources (both in time and money) in developing detailed business plans, as well as the technology and standards for this new service. Equity requires that the Commission allow only the pending applicants to participate in a satellite DARS auction for the 2320-2345 MHz spectrum.<sup>2</sup>

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<sup>1</sup> Should the Commission decide to use auctions to award satellite DARS licenses, it is important that the Commission auction these two satellite DARS licenses prior to the auction of the proposed Wireless Communications Services ("WCS") licenses in GN Docket No. 96-228. As DSBC has explained in comments filed in that proceeding, "the Commission should allow sufficient time between the satellite DARS and WCS auctions to allow winners in the satellite DARS auction both to assess their needs for WCS spectrum and to raise additional funds to participate in the WCS auction, if necessary." Reply Comments of DSBC at 6 (December 16, 1996). To expedite the auction process, DSBC supports the use of on-site bidding procedures for the satellite DARS auction.

<sup>2</sup> So long as the auction is limited to the four pending applicants, the Commission need not employ bidding credits or installment payments, or identify designated entities, to level the playing field among this group of potential licensees. If the Commission were to identify any designated entities, however, DSBC would warrant such a designation. In addition, to preserve the competitiveness of the auction process, the Commission should impose its anti-collusion rules

*Upfront payments.* DSBC supports the Commission's proposal to require sufficient upfront payments to ensure that only sincere applicants who have the wherewithal to bid participate in the auction.<sup>3</sup> Because the licenses to be auctioned for satellite DARS are nationwide, the upfront payments should not be based on a per pop-MHz formula. Rather, the Commission should look to upfront payments required in other nationwide satellite license auctions, such as the recent nationwide DBS auction, where the FCC required payments based on a percentage of the expected value of the spectrum available for auction.<sup>4</sup> In the DBS context, the Commission required upfront payment of \$10 million.<sup>5</sup> The Commission should require no more than this for satellite DARS payments, given the lower value of audio services relative to video.

**III. The Commission should include feeder link spectrum in the award of DARS licenses.**

The separate auction of feeder links for satellite DARS systems is unnecessary and would severely handicap the provision of these services. Rather, to ensure the timely delivery of satellite DARS, the Commission should award auction winners at 2320-2345 MHz the feeder link licenses necessary to complete their systems.

Such action would be consistent with the Commission's decision in the Competitive Bidding Second Report and Order not to auction licenses for frequencies used as intermediate links in the provision of continuous end-to-end services.<sup>6</sup> That decision extended explicitly to MSS feederlinks, which are analogous to the feederlinks planned for satellite DARS. Auction of such links, the Commission explained in that decision, would result in significant delays in the provision of services and impose significant administrative costs on licensees and the Commission. These concerns apply equally in the context of satellite DARS feeder links.

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to auction applicants upon filing of their FCC Forms 175, but no earlier. See 47 C.F.R. § 1.2105 (1995).

<sup>3</sup> See *Revision of Rules and Policies for the Direct Broadcast Satellite Service* at ¶ 197, IB Docket No. 95-168 (December 15, 1995).

<sup>4</sup> See *id.* at ¶ 196.

<sup>5</sup> See *id.*

<sup>6</sup> See *Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, 2355-56 n. 30 (1994).

**IV. The Commission should impose minimal and flexible service and technical rules.**

DSBC believes that the most prudent path for the Commission is to adopt a simple and flexible regulatory framework for DARS. The Commission has recognized that new services, especially satellite services, are risky propositions that require regulatory flexibility with regard to service offerings and technical requirements. DARS rules should permit licensees to offer services and utilize technology that will be responsive to consumer needs and recognize that DARS technology continues to evolve. DSBC reiterates its position that DARS licensees should be permitted the flexibility to offer consumers a variety of audio entertainment and ancillary services and to determine their own regulatory classification based on the mix of services delivered.<sup>7</sup>

Market incentives will cause licensees to deploy systems with technical parameters that will ensure robust service, obviating the need for regulations in this respect. As a result, the Commission need not impose a service link margin requirement or require a demonstration that the service provides that link margin under specific conditions.<sup>8</sup> DSBC agrees with the Commission's proposal to permit DARS operators to employ different data rates to provide a mix of audio formats. The Commission need not and should not, however, impose an abstract and subjective standard such as "CD-Quality" and must modify its proposed definition of DARS accordingly.<sup>9</sup> Similarly, in DSBC's view it is inappropriate for the Commission to require applicants to identify and demonstrate the coding scheme and data rates associated with audio formats of differing quality.<sup>10</sup> While DSBC would be happy to provide the Commission with technical

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<sup>7</sup> Comments of DSBC at 47 (Sept. 15, 1995).

<sup>8</sup> See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Notice of Proposed Rulemaking, 11 FCC Rcd 1, 46 and Appendix I. (Proposed Rule 25.144(b)(2)).

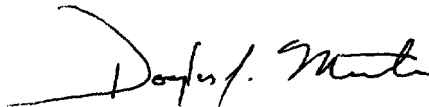
<sup>9</sup> Proposed Rule 25.201 defines satellite DARS as "a radiocommunication service in which compact disc quality audio programming is digitally transmitted by one or more space stations directly to fixed, mobile, and/or portable stations." *Id.* at Appendix I. DSBC urges the Commission to remove "compact disc quality" from the definition.

<sup>10</sup> Proposed Rule 25.144(b)(2)(i) - (iii) concern technical qualifications for satellite DARS. DSBC urges the Commission not to adopt these proposed rules.

William Caton  
December 20, 1996  
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briefings regarding this or any other component of its system, matters of this complexity should not form the basis for any Commission rules.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Douglas J. Minster". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Douglas J. Minster  
Vice President, Corporate Development  
Digital Satellite Broadcasting Corporation

cc: Chairman Reed Hundt  
Commissioner James Quello  
Commissioner Rachelle Chong  
Commissioner Susan Ness  
Donald H. Gips, Chief  
Rosalind Allen  
Kathleen Ham  
Amy Zoslov  
Nancy Markowitz  
John Stern  
Rosalee Chiara  
Ronald Repasi  
Rodney Small  
Dan Phythyon